

Political activities; assisting in transition of office of Governor. A nonprofit organization formed to implement an orderly change of administration of the office of Governor of a State by assisting the Governor-elect, during the period between his election and inauguration in screening and selecting applicants for State appointive offices and preparing a legislative message and program reflecting the party's platform and budget, is an 'action' organization under section 1.501(c)(3)-1 of the regulations, and does not qualify for exemption.

Advice has been requested whether the nonprofit organization described below is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was formed for the purpose of implementing an orderly change of administration of the office of the Governor of a particular State in the most efficient and economical fashion possible by assisting the Governor-elect during the period between his election and inauguration. The principal functions of the subject organization are: (1) to screen and select applicants for important State appointive offices and (2) to prepare a legislative message and program reflecting the party's platform and a proposed budget and budget message for the Governor-elect which he will present for enactment by the Legislature immediately after his inauguration.

The State will officially provide similar services to the executive after the inauguration, but has never provided these services prior to any inauguration.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for religious, charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in or intervene in any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of 'charity' as developed by judicial decisions. Such term includes lessening of the burdens of Government, and the promotion of social welfare by organizations designed to

accomplish the above.

Section 1.501(c)(3)-1(b)(3)(iii) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to have objectives and to engage in activities which characterize it as an 'action' organization as defined in paragraph (c)(3) of this section.

Section 1.501(c)(3)-1(c)(3) of the regulations provides that an organization is an 'action' organization if it advocates, to a substantial extent, the adoption or rejection of legislation or has the following two characteristics: (a) its main or primary objective or objectives may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization are to be considered.

The government is the party best qualified to decide whether a particular activity is sufficiently in the public interest to warrant its recognition as a legitimate function of government. Unlike some other jurisdictions, this particular jurisdiction has not seen fit to provide services of the type described above for the Governor-elect and thus has not recognized such activities as functions of government prior to his inauguration.

Thus, the activities of the subject organization are not relieving any burden of the government.

Furthermore, while the people of the jurisdiction may well derive a substantial benefit from the activities of this organization, its predominant purpose is to effectuate changes in the government's policies and personnel which will make them correspond with the partisan political interests of both the Governor-elect and the political party he represents.

Since the activities are partisan in nature and are directed to a substantial extent to the adoption of legislation, the organization is an 'action' organization as described in section 1.501(c)(3)-1(c)(3) of the regulations.

Accordingly, the organization described above is not exempt from Federal income tax under section 501(c)(3) of the Code.